

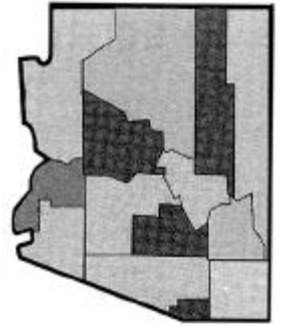


an association of family, court and community professionals

The Newsletter

September 2002

Arizona Chapter



President's Message, by Annette Burns

As chapter president of Arizona AFCC, I've had a great opportunity to work with some of the most dedicated family law professionals in Arizona. But one of the great benefits of AFCC is the exposure we have to family law professionals throughout the country and internationally. In Hawaii, for example, the international AFCC conference gave me the opportunity to meet and work with professionals from many, many states, Great Britain, Australian, Canada, Sweden, and Asia.

In the many workshops I attended there, I was struck by how far along Arizona is in some areas. While it's easy to think that we're always behind the 8-ball and always struggling with problems, cutbacks, shortages, overflows, and budget limits, it's easy to forget that Arizona is doing a spectacular job in many family law areas. Arizona is unquestionably a pioneer in Model Parenting Plans. Arizona's Model Parenting Plans are undoubtedly going to be the Model to watch, imitate and even copy by other jurisdictions. I have no doubt that by watching how the Plans work in our state, and by watching what other jurisdictions do with the Plans, we can continue to improve them.

Some workshops in Hawaii had to do with a unified family court system, which Hawaii has utilized for over twenty-five years — an unbelievable fact to me, as I thought unified family court was a relatively new concept. Although it can be said that Arizona is in the beginning stages of a unified system right now (as the draft Plan for the system to our legislature is due October 31, 2002), I was also gratified to note that even without a formal unified family court system in place, many of Arizona's systems and procedures are among the best out there. You might be surprised to know how many other jurisdictions look to Arizona and Arizona's leaders in the areas of law, judiciary, mental health, legislation, and court administration for guidance to improve their own systems.

Obviously, I was proud to be in Hawaii as a representative of Arizona AFCC, and I'll also be very pleased to attend the Florida AFCC chapter's conference in Tampa on

October 25-26. Although the Florida chapter is much newer than our chapter, they put on a spectacular conference and are very successful. I'll be pleased to review their systems and bring back new ideas that will work in Arizona.

Then in November, Arizona AFCC will be very involved in International AFCC's two presentations in Tucson, from November 7-12 at the Westward Look. The Congress and Symposium there on education and access programs and on child custody evaluations will be outstanding, and our chapter will help out in any way we can in showing off part of our gorgeous state.

If that wasn't enough, the Arizona chapter is hard at work on our annual conference coming up in February, 2003, which is titled "*Working on the Edge: Challenges in Family Law*". It will be held again at the Hilton Sedona Resort & Spa, a location our members and attendees seem to love, and for good reason. We hope to meet and exceed our usual high standards for presenters and workshops.

We are very pleased to have Dr. Mavis Hetherington, author and professor at the University of Virginia, as our keynote speaker. Dr. Hetherington and many other presenters of note will address the challenges and stresses of family law practices for all our professions, with solutions for us, and solutions we can help our clients, patients, and litigants to use. I'll write more on our conference as it develops, but it's definitely one you won't want to miss.

I'm hugely enjoying my stay as chapter president, but it's work. As I took office on February 9, 2002, and I couldn't help but mentally note the 6-month point of my tenure on August 9. The next six months promise to be busy, but I'll do anything I can to answer your questions and concerns about AFCC and Arizona AFCC. Please contact me anytime at 602-230-9118 or AnnetteAFCC@yahoo.com. I look forward to hearing from you.



THE CHANGING FACE OF DISPUTE RESOLUTION

The entire legal profession — lawyers, judges, law professors — has become so mesmerized with the stimulation of the courtroom that we tend to forget that we ought to be healers of conflict. For many claims, trials by adversarial contest must in time go the way of the ancient trial by battle and blood. Our system is too costly, too painful, too destructive, too inefficient for a truly civilized people.

- Chief Justice Warren Burger, in his 1984 State of the Judiciary Address

AFCC'S APPROACH TO DISPUTE RESOLUTION

AFCC, since its inception, has been in the forefront of providing alternatives to the traditional adversarial system for families involved in divorce, paternity, custody and parenting time disputes. Indeed, AFCC is devoted to the "constructive resolution of family conflict." When AFCC began in California in 1963, its focus was on providing court connected conciliation services. In the 1980s, the focus turned more towards mediation as legislatures in many states began to mandate mediation for families involved in custody disputes. In 1982-1984, AFCC's Mediation Committee hosted three national symposia on mediation standards. Representatives of more than thirty organizations participated in producing the first set of model standards of practice for family and divorce mediators. By the late 1980s, mediation of custody and visitation disputes became mandatory in more than 33 states.

But during that same time frame, fifteen years ago, law schools did not even offer courses in alternative dispute resolution. Law professors, lawyers, and litigants alike relied on the traditional adversarial system assuming it was a reliable way to resolve conflicts, including family disputes. Court calendar backlogs and skyrocketing costs, however, have made it painfully obvious that the system is not working the way it should and that there must be alternatives. Disputing parties are becoming increasingly aware of the perils of litigation. Courtroom battles are expensive, uncertain, public, and deny the parties any control in resolving their conflict. In family disputes the perils are even greater. The adversarial combat increases hostility and undermines the parties' ability to communicate about their children or at all.

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THE ARIZONA SUPREME COURT'S SOLUTION: RULE 16(G)

In 2001, the Arizona Supreme Court acknowledged the problems that exist in the traditional adversarial system. On October 22, 2001, the Court approved new Rule 16(g) of the Arizona Rules of Civil Procedure (ARCP), effective for actions filed after December 1, 2001. The Court also adopted Form 3, Joint Alternative Dispute Resolution Statement.

Section One of the rule allows the court, after consultation with the parties to direct them "to submit the dispute . . . to an alternative dispute resolution [ADR] program created or authorized by appropriate local court rules." See Rule 16(g)(1), ARCP. A party may also move the court to submit the matter to ADR.

Section Two mandates that the parties, including unrepresented parties, consider ADR early in the case. See Rule 16(g)(2), ARCP. The rule creates a duty for the parties to confer, in person or by telephone, no later than 90 days after the defendant or respondent appears. It mandates that the parties make a *good faith* effort to settle the case promptly or agree on an ADR process.

Within 30 days after their conference, the parties must report whether they have agreed to an ADR process by submitting the Joint ADR Statement (Form 3) to the Court. The parties must identify the ADR process and ADR provider they will use, and when they expect the ADR proceedings to be completed. The Form identifies six alternatives, some of which are not applicable to family cases. They are: mediation, binding arbitration, early neutral evaluation, short trial, summary jury trial, or judge pro tem. There is also a check box for "other." As will be discussed below, "other" ADR options are available in family cases.

If the parties have not agreed to use a specific ADR process, each party must inform the court of the ADR process they believe is appropriate, or in the alternative, state why they believe ADR is not appropriate. Any party may request a conference with the judge to discuss ADR. Last, the court may direct the parties to discuss ADR with a court-appointed ADR specialist.

Rule 16(g) in Family Court

In an article written for the Maricopa Lawyer last Spring, Maricopa County Associate Presiding Judge and Presiding Family Court Judge Mark Armstrong dispelled any rumors that the new rule may not apply to Family Court as follows:

This rule obviously applies to civil cases since it is in the Rules of CIVIL Procedure. Some have questioned, though, whether it also applies in family law cases. I believe that it does. Maricopa County Local Rule 6.2a specifically provides that the Arizona Rules of Civil Procedure apply to proceedings in Family Court. Therefore, beginning with cases filed after December 1, 2001, family law attorneys should follow the new rule.

It is heartening for AFCC members to see that the Court recognizes the benefits of ADR, especially mediation. The Conciliation Services departments of Arizona courts have offered mediation for custody and parenting time disputes for many years. If the parties were successful in settling that portion of their case, however, they were still left with unresolved financial issues and still had to go to court to have these issues resolved. With the implementation of Rule 16(g), the parties can now obtain assistance in settling *all* the issues in the case.

In Maricopa County, the court has instituted a structured settlement conference program under the able leadership of Serena Hagevik, ADR Coordinator. Court commissioners and volunteer attorneys who act as judges pro tem conduct settlement conferences at the courthouse or in their offices. The settlement rate is excellent and is already helping to alleviate backlogs in the system. The court also plans to provide an approved ADR provider list so parties can be assured that capable private providers are available if they wish to seek out of court assistance.

Coconino County has gone further than Maricopa County in implementing Rule 16(g). The County had an experimental rule in effect, Local Rule 18, since 1994. The rule became permanent as of December 1, 2001. Local Rule 18, establishes an authorized alternative dispute resolution program. Pursuant to the rule, the Court "shall" order a case to be submitted to a specific ADR program "unless the court makes an affirmative finding, on the record, that the case is inappropriate for an available ADR proceeding." See Coconino County Local Rule 18. F. All proceedings, except summary judgment motions or motions to dismiss, orders to show cause and motions made pursuant to the local rules are stayed until the ADR proceedings terminate. Civil cases are mediated through the program using a team of court-trained, court-approved mediators - an attorney and a non-attorney, generally a male and female. Parties pay \$200 each for a half-day session. The mediators each

receive \$100, and the Court keeps the rest to help with program costs. The Family Court (domestic relations) cases are mediated through Conciliation Court. The Coconino County ADR Director, Nicole Ack, reports that the settlement rate is 70%.

ADR Options

Mediation is usually the ADR process of choice for family cases. In mediation, the parties have control over the outcome, because they, and not a third party, decide whether there is an agreement and what the agreement is. Mediation may be “facilitative” or “evaluative.” In facilitative mediation, the mediator helps parties to communicate so they can fashion solutions to their dispute. In evaluative mediation (most used by former judges or in settlement conferences) the third party neutral evaluates the strength and weaknesses of the case and thus helps the parties reach an agreement.

Rule 16(g) also contemplates that the parties may submit to arbitration. With binding arbitration, the parties stipulate pursuant to A.R.S. §12-1501 that a third party neutral will try the case. Arbitration awards are appealable only in limited areas. See A.R.S. §§12-1512-1513. In Maricopa County an approved Stipulation and Order for arbitration is available at the court’s website.

Early neutral evaluation is also an option. In this process, a third party, usually an expert in the area provides an evaluation of the case. When this evaluation occurs “early,” and the parties reach an agreement, they save themselves and the courts time and money. Of course, the neutral evaluator’s credibility is key and usually depends on his or her trial experience in the area.

Other out-of-court options in Family Court are available. The parties may agree to:

- Non-binding Arbitration
- Med/Arb
- Arb/Med

Non-binding arbitration appears on its face to be a contradiction in terms. It is actually a neutral evaluation in which a hearing takes before the arbitrator, but the parties are not bound to the arbitrator’s decision. The process facilitates negotiation by allowing the parties to test the strengths and weaknesses of their case and to see what the outcome would be.

In Med/Arb (short for mediation/arbitration), the parties participate in a conference in which they agree to allow the mediation to progress with the hope that the entire case will be resolved. If, however, the parties reach an impasse, they understand that the mediation is then converted to an arbitration.

In Arb/Med, a relatively recent innovation in ADR process, the parties agree to allow the arbitrator to act as a mediator after he or she has heard the arbitration. The arbitrator renders a decision only if the parties fail to reach an agreement on their own.

The courts are charged with providing “the just, speedy, and inexpensive determination of every action.” See Rule 1, ARCP. They have wisely turned to alternatives so that goal can be met. As parties and practioners turn to ADR, likely they will find other creative options for resolving cases out of court. Hopefully, the “bloody battles” Justice Burger decried will become the way of the past.

For the complete text of Rule 16(g) and Local Rule 18 at the Arizona Supreme Court website go to: www.supreme.state.az.us/courtserv/adr/Current_Items.htm.

Leah Pallin-Hill is a member of the Arizona AFCC Board of Directors and as Chapter Council Representative, a member of the AFCC International Board. She volunteers at the Maricopa County Superior Court on a regular basis as a Judge pro tem in the Family and Civil divisions. Leah left the Maricopa County Superior Court bench in May 2002 where she was Presiding Family Commissioner and a Judge pro tem to open her office: Mediation and Arbitration Services for civil and family disputes. She can be reached at 602.387.5323 or leahpallinhill@aol.com.

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Advertising of professional services, events, and products may be placed in the Newsletter at the rates indicated below. Only camera-ready ads will be accepted. All advertisements must comply with state and federal truth in advertising laws/guidelines, and with the mission and purposes of the Arizona Chapter of the AFCC (AzAFCC) and the AFCC. AzAFCC reserves the right to unilaterally reject, omit or cancel advertising not deemed to be in the best interests of the association. Decisions to accept ads are the responsibility of the Executive Committee of the Board of Directors of the AzAFCC.

All articles, announcements and advertising are due to the Editor by the 15th of the month prior to the month of publication. The Newsletter is published 3 times a year in April, September, and December. AzAFCC reserves the right to edit submitted material as deemed appropriate.

Advertisements will be accepted when accompanied by a check based on the following PER ISSUE rates:

	Member Cost	Non-Member Cost
Bus. Card	\$30	\$50
1/4 Page	\$75	\$100
1/2 Page	\$150	\$200
Full Page	\$200	\$300

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**From One Paradise to Another:
Arizona AFCC Visits the Big Island**

by Annette Burns

On June 5, 2002, the AFCC International Annual Conference opened its doors at the beautiful Hilton Waikoloa on the Big Island of Hawaii. Most conference attendees first encountered the Big Island upon leaving Keahole Airport at Kona and driving about 20 minutes along the Queen Ka'ahumanu highway to the Hilton Waikoloa area. The scenery between the airport and Waikoloa is, to be kind, desolate, as the countryside is made up almost entirely of black lava flows dating back to 1801 and earlier. But I'd been warned about this barren stretch of land, and I wasn't worried that AFCC planned on spending three days in a lava field.

The Waikoloa Resort area is spectacular, falling on a part of the coast with beautiful blue ocean, freshwater pools, palm trees, and a gorgeous beach. The commercial and resort offerings at Waikoloa Resort consist mainly of the Hilton's huge expanse; the Outrigger Resort which fronts Anaeho'omalu Beach; several golf courses; the Kings Shops, with several stores, a general market, the original Roy's Restaurant (as in Roy Yamaguchi); and several gorgeous condominium complexes. The whole of AFCC's conference was located at the Hilton, but the rest of the area offered conference attendees and their families lots of distractions during the week.

The opening conference session on Wednesday evening featured Dr. Robert Emery, Dr. Joan Kelly, and the Chief Justice of Family Court in Melbourne, Australia, the Honorable Alastair Nicholson. Drs. Kelly and Emery gave an outstanding presentation on Resiliency in Children of Divorce. Their presentation included their ideas, developed through research, as to why different children survive their parents' divorce situations with very different perspectives. They offered suggestions about how divorce can be handled to create the best possible outcomes for children.

Other outstanding presenters throughout the conference included Constance Ahrons, the author of *The Good Divorce*; AFCC past-president Hon. Arlene Rotman; Hon. Michael Town, First Circuit Court, Hawaii; incoming AFCC President Jan Shaw; Christine Coates; Hon. Frances Wong, Senior Family Court Judge, Hawaii; attorney

Catherine Smith, who was one of the attorneys in *Troxel v. Granville*; and Jean McBride of the Center for Divorce and Remarriage.

Workshop topics on Thursday, Friday, and Saturday morning included alienation, pro se litigants, family court models, custody evaluations, grandparents' rights, play therapy; parent and child divorce education, model parenting plans, faith-based custody issues, long-distance parenting, high-conflict cases, infant parenting schedules, ethical dilemmas, domestic violence, judgment writing, parents' mental health problems and solutions, stepfamily issues, and the Uniform Mediation Act and other mediation topics.

Arizona AFCC was well-represented at the conference through workshops presented by Leah Pallin-Hill, Sidney Buckman, Hon. Fred Newton, Dr. Sanford Braver; Dr. William Fabricius, Dr. Irwin Sandler, Frances Bernfeld, and Hon. Bethany Hicks.

Arizona chapter attendees at the conference included Sid Buckman, Hon. Fred Newton, Marilyn Murphy, Frances Bernfeld, Hon. Ann Sterling, Dr. Joel Glassman, Sandy Furlong, Annette Burns, Donna Farar-Jewett, Hon. Bethany Hicks, Nancy Gray-Eade, Leah Pallin-Hill, Sharon Douglas, Elaine Fridlund-Horne, Hon. Nanette Warner, Dr. Fred Mitchell, Cory Erickson; and many of their families, of course. On Thursday evening, the Arizona chapter of AFCC met for a meeting on the patio at a Hilton restaurant, with a view of the sun setting into the Pacific.

On Friday evening, the AFCC annual banquet/luau was hosted at the Hilton, preceded by a silent auction and happy hour. No one who has ever attended an AFCC event was surprised by the outstanding Hospitality Suite, which was located in a ninth floor penthouse suite overlooking the entire Hilton property. It was difficult to tear ourselves away from the Hospitality Suite each night, but every day was packed with so many activities (both AFCC and non-AFCC) that sleep was an absolute necessity.

Hawaii will be an amazingly tough act to follow, but AFCC is following up quickly with the Child Custody Symposium and the Congress on Parent Education and Access Programs in Tucson on November 7-9 and November 10-12, 2002. AFCC's Annual Conference in 2003 will be held in Ottawa, Canada from May 28-31, 2003.

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Announcements...

We wish to thank the Honorable Bethany Hicks for her hard work and dedication to the AzAFCC Board of Directors. She recently resigned from the Board and she will be missed.

AFCC is presenting the Fifth International Symposium on Custody Evaluations and the Fifth International Congress on Parent Education and Access Programs in Tucson, AZ, from November 7-12. If you have not received a brochure, call AFCC at 608.664.3750 or visit their website at afcc.org to obtain one.

The University of Arizona is sponsoring an interdisciplinary conference titled, "Youth, Voice, & Power" in Tucson from October 11-13. For information or to register call Donna Reams at 520.626.2400.

Mark your calendar for AzAFCC's annual conference scheduled for February 7-9, 2003.

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